IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.15757 of 2004

Between:

D. Venkataramana Reddy, S/o. D. Venkataswamy Reddy,
R/o. Lakshminagar Colony, Rompicherla Village and Mandal,
Chittoor District.

...PETITIONER

AND

1. The Commissioner and Registrar of Cooperative Societies, Government of Andhra Pradesh, Hyderabad.
2. The District Cooperative Officer, Chittoor.
3. Rompicherla Primary Agriculture Cooperative Society, Rompicherla, Chittoor District, rep.by the Person-Charge, Chairman.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the 3rd respondent dated 11.06.2004 as illegal arbitrary and in violation of principle of natural justice.

Counsel for the Petitioner: MR.SURESH KUMAR REDDY KALAVA

Counsel for the Respondents: GP FOR COOPERATION

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.15757 of 2004

ORDER:

Heard Sri O.Manoher Reddy, the learned counsel appearing for the petitioner and Sri P.Srinivas, the learned standing counsel appearing for the third respondent and also the learned Government Pleader for Cooperation appearing the first and second respondents.

At the request on both sides, the main Writ Petition itself is taken up for disposal.

The petitioner, who has been working as a paid secretary of the third respondent-Society, files this Writ Petition, *inter alia*, seeking a writ of Mandamus assailing the impugned orders dated 11.06.2004, removing him permanently from the said post.

The case of the petitioner is that he has been working as paid secretary for the third respondent-society. Though initially posted at Bommayagaripalli, subsequently he was posted to the third

respondent-society and he continued to work there. On certain allegations, he was suspended from his services on 31.12.2002. Though the said suspension was revoked on 31.01.2004, the petitioner was placed under suspension by the order dated 09.03.2004. Thereafter, the impugned orders have been passed removing him

from the service and the appeal filed by the petitioner was returned on 17.08.2004 stating that the Collector has no jurisdiction. Hence, the petitioner filed the present Writ Petition.

The learned counsel appearing for the petitioner raised a substantial question on the ground that subsequent to the appointment of the enquiry committee for enquiring into the allegations, there was no notice nor any opportunity was provided to him. Therefore, the entire impugned action, especially, with all imputations, is without any proper notice or opportunity. In support of his contention, he placed reliance on Clause No.14 of the By Laws of the Society, wherein it contemplated a comprehensive enquiry into the allegations. Therefore, in this case, having not been followed the By Laws, the entire impugned action as initiated against the petitioner is totally vitiated.

Sri P.Srinivas, the learned standing counsel for the third respondent filed a counter-affidavit denying all the allegations in the Writ Petition and submits that having regard to the facts and circumstances of the case and especially the issuance of the notice twice to the petitioners and taking out substitute service by affixing the notice to the door of the petitioner's house, there was no attempt on the part of the petitioner to participate in the enquiry. Therefore, it is not the respondent, whose action is to be vitiated but the petitioner, who had not complied with the requirement of the notice. Even otherwise, the petitioner has been rightly removed from the service on the allegations.

Considering the submissions made and on perusal of the material available on record, the question that falls for consideration is as to whether the impugned order

of removal of the petitioner from his service is valid?

There is no dispute to the fact that at the relevant point of time, the petitioner was working with the third respondent. Earlier, he was suspended from the service and ultimately, he was removed there from under the impugned orders. The question that the petitioner was given any opportunity even though a committee was appointed was sought to be answered in the counter-affidavit filed by the person in-charge of the third respondent-society. It is brought to the notice of this Court that during the course of the domestic enquiry, a notice was issued on 15.04.2004 for his appearance on 13.05.2004. However, it was sent by registered post, but was returned unserved. Therefore, another copy was taken and affixed to the door of the petitioner, as he was not available at the relevant time. Beyond all these exercises, there is no other service and hence, the committee proceeded with the enquiry, ultimately issuing the impugned orders. On the face of it, it is quite clear that though two attempts have been made by the third respondent to serve the notice, there is no proper explanation from the other side as to why the best possible course was taken for serving notice on their own employee and also as to why and how the petitioner could find abstain himself on both occasions when the notice was served.

It is also submitted by Sri P.Srinivas, the learned standing counsel, appearing for the third respondent that having regard to the subsequent amendments which brought in a drastic change, the reliance placed by the learned counsel for the petitioner on Clause No.14 of the By Laws has no application. On a reading of the subsequent By Laws, it is seen that the same is more comprehensive than the

earlier one on which the learned counsel for the petitioner placed reliance. However, it is not necessary to go into the question as to the applicability of the old By Laws in the place of new By Laws but On the circumstances, apparently, the petitioner has no opportunity to participate in the enquiry.

Be that as it may, having regard to the allegations and the seriousness there of, such an imputation should not be possible to be taken for granted for inflicting the serious punishment of removal of the petitioner from service, unless proper enquiry is conducted and arrived at a finding on the basis of the evidence as let in from both sides. In the circumstances, it is felt necessary that one more opportunity should be given to the petitioner to go through such an enquiry, so that he can also have an opportunity to rebut the allegations made against him. In the circumstances, it is to be held that in the absence of proper service of notice as such during the course of the enquiry, the entire proceedings are vitiated and liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned orders are set aside, directing the respondents to conduct fresh enquiry and dispose of the same on merits in accordance with law, after issuing notice and giving sufficient opportunity to the petitioner. The entire exercise shall be completed within a period of four months from the date of receipt of a copy of this order. It is needless to mention that the petitioner shall continue to remain under suspension and he shall be paid all the subsistence allowances and other allowances he is entitled to.

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(B.PRAKASH RAO, J)

7th February 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the seventh day of February 2005.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner and Registrar of Cooperative Societies, Government of Andhra Pradesh, Hyderabad.

2. The District Cooperative Officer, Chittoor.

3. The Person-Charge, Chairman, Rompicherla Primary Agriculture Cooperative Society, Rompicherla, Chittoor District.

4. Two CCs to GP for Cooperation, High Court Buildings, Hyderabad (OUT).

5. Two CD copies.